

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

YORLAN ESPINOSA PENA, WARNER B.
BARRANTES, SAHAR HAMADI, ROBERT
L. GARCIA, RANDY MORENO, PETER W.
RODINO, MIGUEL GUZMAN, MICHAEL
R. MYZAK, MAXWELL S. GIVEN, MAX
GENE MILLER, MARK R. DHOND'T, MARK
S. MAGITMAN, LAZARO MANUEL
URQUIOLA VENTA, KEVIN PEREZ,
JOSEPH RICHARD DIAZ, JESUS A.
SANCHEZ, IRVING HERNANDEZ, HENRY
GUEVARA, PATRICK J. GARRY, GABRIEL
L. CUERVO, EDWIN OSCAR TORRES
VAZQUEZTELL, DANIEL J. BARRON,
CYPRISS A. WOODALL, CLAUDIA
GRAVERAN, ALEXANDER M. HOWARD,
AIMEE SANTANA PEREZ, GEOFFREY C.
HART and BLAS E. ALEMAN,

Petitioners,

vs.

CASE NO.

STATE OF FLORIDA,

Respondent.

/

PETITION FOR WRIT OF PROHIBITION

Petitioners hereby file this Petition for a Writ of Prohibition, pursuant to Rule 9.100, Florida Rules of Appellate Procedure, and state:

A. Basis for Invoking the Jurisdiction of the Court.

Petitioners, all of whom are the Defendants in civil traffic cases, matters in the County Court in and for Lee County, Florida, each filed a motion for disqualification of a trial judge on the same stated basis, as detailed below. The trial judge, by separate orders, denied each of the Petitioner's motion to disqualify. A Petition for a Writ of Prohibition is the proper original

proceeding to challenge or review this denial. See *Campbell Soup Company v. Roberts*, 676 So. 2d 435 (Fla. 2d DCA 1996).

The jurisdiction of the circuit court to issue writs of prohibition is set forth in Rules 9.030(c)(3), Fla. R. App. P., giving the circuit court authority to enter writs of prohibition, and 9.100, Fla. R. App. P., regarding writs to an inferior court.

B. Facts on which Petitioners Rely.

Each of the Petitioners filed a motion to disqualify County Court Judge James Adams in their respective traffic matter. Attached hereto as part of the Appendix to this Petition are 28 separate Orders entered by Judge Adams in each of the Petitioner's cases denying the motion to disqualify Judge Adams. App. 1-28. A sample motion to disqualify Judge Adams taken from State v. Irving Hernandez, Case No. 17-TR-25278 is included in the Appendix.¹ App. 29-28.

A blank version of the motion to disqualify is included in this section to show exactly what was alleged by each Petitioner. Essentially, as detailed in the motion to disqualify, each Petitioner alleged fear of bias and prejudice for the following reasons:

- a) Judge Adams showed a special interest in Petitioner's cases; and, while the cases had been randomly assigned to another judge, Judge Adams took it upon himself to assign all of the cases to himself;
- b) Judge Adams had spoken with a Traffic Hearing Officer Turner and warned THO Turner to not be lenient to drivers in withholding adjudication;

¹ The undersigned represents to this Court that each Petitioner filed the identical motion to disqualify, on identical grounds, but includes only one such motion for the sake of brevity. If the Court requires, the Appendix can be supplemented to include each individual motion to disqualify Judge Adams.

c) Counsel for Petitioners had discovered that a Clerk employee, Linda Falde, sent an email² to Judge Adams informing him that a hearing officer presiding the day the email was sent had been talked into withholding adjudications after finding defendants guilty;

d) Upon receiving the email from Ms. Falde, Judge Adams wrote back that he would discuss this matter with the hearing officer.

e) After the emails, copies attached to the motion to disqualify, were requested and obtained by trial counsel for Petitioners, William Moffatt, was asked by Judge Adams to approach the bench, and inquired why the emails had been requested. Mr. Moffatt explained that he had learned that THO Turner had stated that he had been talked to by Judge Adams regarding withholding adjudications.

f) During this conversation, Judge Adams informed Mr. Moffatt, who filed an Affidavit attached to each Petitioner's motion to disqualify, that he read a report indicating that Lee County was a place for aggressive drivers.

g) Judge Adams had not only formulated a policy with regard to withholding adjudication, but with the help Ms. Falde, and through his own efforts, improperly imposed his view on traffic hearing officers.

Each motion to disqualify contained 14 paragraphs of factual allegations, a memorandum of law, a certificate of good faith, certificate of service, Affidavit of William Moffat as to the facts, and an Affidavit of each Petitioner stating that, upon learning of the facts, each Petitioner feared that he or she could not receive fair and impartial treatment from Judge Adams. A blank Motion for Disqualification is set forth herein to show exactly what was presented to Judge Adams in the lower court.

² The email had been obtained by counsel for Petitioners by request.

MOTION FOR DISQUALIFICATION OF JUDGE JAMES ADAMS

COMES NOW the Defendant, _____, by and through the undersigned attorney, and files this Motion for Disqualification of County Court Judge James Adams, pursuant to Florida Rule of Judicial Administration 2.330, and Section 38.10 Florida Statutes, and requests that this Court enter an order disqualifying Judge James Adams from all further proceedings in the above-styled cause and any other cases of the undersigned's law firm, as grounds therefore states the following:

1. _____, is the Defendant in the above-listed traffic infraction case.
2. The undersigned's office learned that this matter was assigned to Judge Adams' traffic docket on _____ (date we found out assigned to adams' docket?) _____, 2017.
3. The undersigned was approached by Traffic Hearing Officer Turner in the middle of December, 2016 and was warned that he "was talked to" and that he would no longer be as lenient as he had been in the past.
4. Not knowing who "talked to" Hearing Officer Turner, the undersigned was unaware if any inappropriate communications had taken place between Hearing Officer Turner and any other court official.
5. In order to make that determination, the undersigned's office requested all e-mails relating to traffic court from Judge James Adams, Chief County Court Judge in Lee County.
6. The undersigned's office received a series of e-mails from court administration on May 9, 2017. One of these e-mails was troubling, and appears to establish inappropriate conduct on the part of the clerk's office and Judge Adams.
7. An e-mail dated Wednesday, December 14, 2016 was written from Clerk employee, Linda Falde to Judge Adams. In this e-mail, Ms. Falde references the hearing officer who is presiding over the docket on that day. Removing herself from her position as a neutral clerk

employee, and becoming an adversary to drivers, Ms. Falde reported to Judge Adams that the hearing officer was being "talked into withholding adjudication" and she needed to talk to Judge Adams about this conduct in court. On the same day, Judge Adams replied to Ms. Falde and assured her that he will "have a discussion with him shortly."

8. Shortly after this e-mail was sent by Judge Adams, the undersigned was approached by Hearing Officer Turner, and told that he had "been talked to" and that he would no longer be as lenient as he had been in the past.

9. In May 2017, Judge Adams called the undersigned to the bench in open court. Judge Adams questioned why the undersigned's law firm had requested his traffic related e-mails. The undersigned explained that he had been told by the traffic magistrates that they had "been talked to" and would no longer be as lenient as they had been in the past. Further, Judge Adams explained that he had read a report that indicated that Lee County was known as a place for aggressive drivers, presumably explaining why he "talked to" the traffic magistrates about their actions in traffic court.

10. In the past, Judge Adams required a number of the undersigned's clients to pay their fines and court costs the same day as their traffic hearing. This ruling was in clear violation of Traffic Rule 6.480 (a). Consequently, many clients had their driver license suspended improperly based on this improper court order.

11. Recently, Judge Adams ruled that a recapture period applied to the speedy trial rule for traffic infractions, even though the Traffic Rules clearly do not provide for a recapture period (Traffic Rule 6.325 (a)). Consequently, three drivers who were tried more than 180 days after the issuance date of their citation did not have their cases dismissed, even though they were not attributable for any delays in their case. These cases are now on appeal before the Lee County Circuit Court.

12. Judge Adams has recently ruled that if a driver avails himself of Traffic Rule 6.630 (n), that driver waives his/her right to a speedy trial, even though the rule makes no mention of this waiver.

13. On April 20, 2017 the undersigned's law firm filed a number of Notices of Appearances for traffic infractions, requesting a County Court Judge to hear the cases. Even though another Judge was scheduled to be assigned these cases, Judge Adams took it upon himself to assign all of these cases to a special docket in his own courtroom. The undersigned's office called the Clerk's office to ascertain why this happened and was advised by an assistant Supervisor that another Judge should have been assigned those cases based on the pre-determined schedule. The undersigned's office asked for a copy of the Administrative Order that allowed for one Judge to avoid the random assignment of cases and to place them on a special docket in his/her own courtroom. That request has not been responded to at the time of the filing of this motion. Another supervisor at the clerk's office did reply with an e-mail, explaining that the judge's dockets were busy and this special docket was set up in an effort to deal with the high number of traffic cases presented to the county court judges. Again, a copy of the administrative order authorizing this was requested, but no reply has been received.

14. Based upon the aforementioned rulings, comments and conduct, Judge Adams appears to have attempted to improperly influence the traffic magistrates in Lee County, is improperly communicating with Clerk personnel during traffic court about said magistrates, has voiced his intent to sentence drivers more severely based on the fact that he read an article that indicated that Lee County is known for aggressive drivers and is making numerous rulings that show his bias toward those charged with traffic violations.

MEMORANDUM OF LAW

At the outset, "legal sufficiency" of a motion for disqualification is defined as whether facts alleged, which cannot be traversed, rebutted or questioned, support a reasonable basis for fear of the litigant that he/she will not receive a fair trial or hearing by the judge or where a

reasonably prudent person would fear not receiving fair proceedings. See *State v. Shaw*, 643 So.2d 1163 (Fla. 4th DCA 1994); *O'Farrell v. Rothenberg*, 635 So.2d 1075 (Fla. 3rd DCA 1994). Here Defendant's motion is "legally sufficient" where the facts alleged do support a reasonable basis for fear that the litigant will not receive fair proceedings.

A judge is forbidden from making any blanket policies before cases are heard on their merits. See *Martin v. State*, (Fla. 4th DCA 2001); *Torres v. State*, 697 So.2d 175 (Fla. 4th DCA 1997); *Hayes v. State*, 686 So.2d 694 (Fla. 4th DCA 1996). Here, Judge Adams, has, as alleged, created an improper policy of being more strict against those charged with driving offenses, regardless of the facts in the particular case, as communicated to the undersigned and the traffic magistrates in Lee County.

To make matter worse, not only has Judge Adams created this policy in his own courtroom, but he has imposed this policy on others, and in doing so, obstructed the independence of the traffic magistrates to make their own independent decisions.

Florida Rule of Traffic Court 6.630 (j) states that all traffic hearing officers shall be subject to the Code of Judicial Conduct as provided in the application section of the code.

Canon 1 of the Code of Judicial Conduct states that a Judge shall uphold the integrity and independence of the judiciary.

Canon 2 A says that a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3 (B) (7) states that a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding... (some unrelated exceptions are then listed).

The commentary to Canon 3 (B) (7) states that the proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

A judge must disclose to all parties all ex parte communications regarding a proceeding pending or impending before the court.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that section 3 (B) (7) is not violated through law clerks or other personnel on the judge's staff.

The instant Motion is legally sufficient as the facts contained herein demonstrate that the Defendant has a well-founded fear that he/she shall not receive a fair proceeding at the hands of Hearing Officer Turner or Judge Adams. See *Cave v. State*, 660 So.2d 704 (Fla. 1995).

The truth of all allegations contained in an initial Motion for Disqualification of a Judge must be assumed. See *Cooper vs. Speiser*, 651 So.2d 718 (Fla. 4th DCA 1995). It is well-settled that no Judge under any circumstances is warranted in presiding over a trial or hearing of the cause if his neutrality is shadowed or even questioned. See *Dickenson vs. Park*, 104 Fla.577, 140 So. 459 (1939).

Section 38.10 Florida Statutes, gives litigants the substantive right to seek disqualification of a Judge. Rule 2.160 (now 2.330), Florida Rules of Judicial Administration, sets forth the procedure to be followed when seeking disqualification. *Enterprise Leasing Co. vs. Jones*, 789 So.2d 964 (Fla. 2001)

Accordingly, upon information and belief, Judge Adams has made comments to the undersigned, has conducted himself improperly by communicating with clerk personnel and traffic magistrates and has made court rulings that call into question his ability to be fair and

impartial, that any client of the undersigned is jeopardized in that their right to a fair and impartial Judge is compromised.

As set forth above, the Defendant cannot receive a fair trial before Judge Adams.

WHEREFORE, it is respectfully requested that Judge Adams disqualify himself from hearing this case or any other cases involving the undersigned's law firm and to randomly re-assign those cases to another County Court Judge.

Respectfully Submitted,

Ted L. Hollander and Assoc. P.A.
dba The Ticket Clinic, a law firm
3376 Cleveland Ave
Fort Myers, FL 33901

By _____
William Moffatt, Esq.,
FBN _____
239- _____

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that this Motion and Defendant's statements contained in the attached affidavit are made in good faith.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Disqualification has been furnished to the Clerk of Court, and Judge James Adams, via the e-filing to the e-portal, this _____ day of _____, 2017.

By _____
William Moffatt, Esq.
FBN _____

AFFIDAVIT OF _____

The undersigned affiant, after being duly sworn states the following:

1. I am the Defendant in case number _____.
2. I have been made aware of the comments that have been made by Hearing Officer Turner to my lawyer about "being talked to" by Judge Adams and that he could no longer be as lenient as he had been in the past.
3. After learning of these comments, I feel that I cannot receive a fair trial with Judge Adams, as he has indicated that he has read an article labeling Lee County as a place with aggressive drivers. Based on these opinions and the fact that he has attempted to talk to and influence others who preside over traffic matters, I feel that I cannot receive a fair hearing in front of Judge Adams.
4. I have a reasonable fear that I will not receive a fair trial or sentencing in this case.
5. I have read the Motion for Disqualification and it is an accurate representation of my understanding of what has occurred prior to my case coming to court.

By: _____
_____, Defendant

State of Florida
County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2017 by _____, who is either personally known to me, or has produced _____ as identification and who did/ did not take an oath.

Sworn and subscribed before me this _____ day of _____, 2017

Notary Public

Commission Expires

Defendant

Affidavit of Attorney William Moffatt.

I regularly appear in front of Traffic Hearing Officer Turner and Judge Adams in Lee County.

Toward the end of 2016, I was approached by Hearing Officer Turner who advised me that he had "been talked to" and that he could no longer be as lenient as he had been in the past.

Shortly after this conversation, Hearing Officer Turner's actions in court changed.

My office requested Judge James Adams' e-mails from court administration, and they were supplied on May 9, 2017.

A reading of one of the e-mails indicates that clerk employee Linda Falde reported to Judge Adams that Hearing Officer Turner was "being talked into" withholding adjudications. Ms. Falde requested to speak with Judge Adams about this conduct.

Judge Adams assured Ms. Falde that he would discuss the issue with Hearing Officer Turner.

These e-mails were written shortly before I was approached by Hearing Officer Turner.

Judge Adams has made numerous ruling that I believe are incorrect and violate the traffic rules. I believe that he has a bias toward those people charged with traffic violations based on his actions and his comments to me in open court.

In May 2017, Judge Adams questioned me why my office had requested his e-mails. He said that he had read an article that indicated that Lee County was known as a place for aggressive drivers. The comment indicated to me a bias toward those charged with traffic infractions, which could jeopardize my clients' ability to get a fair hearing in front of Judge Adams.

I feel that it my obligation under the bar rules to alert my clients of these communications between Judge Adams and Hearing Officer Turner.

William Moffatt, Esq.

State of Florida

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2017 by _____, who is either personally known to me, or has produced _____ as identification and who did/ did not take an oath.

The only items missing from the blank motion are the signatures of Mr. Moffatt, the signatures of the Petitioners, and the signatures of the notary, as well. Also, the emails between Ms. Falde and Judge Adams were attached to each Petitioner's motion to disqualify. In her email to Judge Adams, Ms. Falde wrote:

We are still in traffic court. We still have 9 more cases to go. If you have time I would like to speak with you about something. He is finding defendants guilty after lengthy testimony and then the defendant talks the hearing officer into a WH. Please call me later. App. 36.

In his reply to that email, Judge Adams wrote:

I had meant to talk to him today but time did not allow. I will have a discussion with him shortly. App. 36.

On June 22, 2017, Judge Adams entered 28 Orders denying each Petitioner's motion for disqualification. App. 1-28.

C. Nature of the Relief Sought.

Petitioners seek the entry of a Writ of Prohibition directed to Judge Adams requiring him to disqualify himself in each case, and directing the Clerk to re-assign the matter to another trial judge for further proceedings in the lower court.

D. Argument in Support of the Petition.

Petitioners can only reiterate the argument advanced in the Memorandum of Law set forth in the motion to disqualify.

"Legal sufficiency" of a motion for disqualification is defined as whether facts alleged, which cannot be traversed, rebutted or questioned, support a reasonable basis for fear of the litigant that he/she will not receive a fair trial or hearing by the judge or where a reasonably prudent person would fear not receiving fair proceedings. See *State v. Shaw*, 643 So.2d 1163 (Fla. 4th DCA 1994); *O'Farrell v. Rothenberg*, 635 So.2d 1075 (Fla. 3rd DCA 1994). Here each

Petitioner's motion is "legally sufficient" where the facts alleged do support a reasonable basis for fear that the litigant will not receive fair proceedings.

A litigant, once learning of all the facts, including all that Judge Adams had done and how Judge Adams took cases that had been randomly assigned to different judges, would surely be reasonable in fearing that he or she would not receive fair and impartial treatment before Judge Adams, especially where Judge Adams simply took cases assigned to other judges under the proper random assignment.

The portion of the memorandum based upon improper policies of a judge also requires disqualification. A judge is forbidden from making any blanket policies before cases are heard on their merits. See *Martin v. State*, (Fla. 4th DCA 2001), *Torres v. State*, 697 So.2d 175 (Fla. 4th DCA 1997); *Hayes v. State*, 686 So.2d 694 (Fla. 4th DCA 1996). Here, Judge Adams, has, as alleged, created an improper policy of being more strict against those charged with driving offenses, regardless of the facts in the particular case, as communicated to the undersigned and the traffic magistrates in Lee County.

To make matters worse, not only has Judge Adams created this policy in his own courtroom, but he has imposed this policy on others, and in doing so, obstructed the independence of the traffic magistrates to make their own independent decisions. Judge Adams has no authority whatsoever to impose his beliefs or policies on traffic hearing officers.

Finally, improper bias and prejudice is presented where, without any explanation, Judge Adams took cases randomly assigned to other judges. In the reasonable minds of each Petitioner, Judge Adams appears to have an improper motive in taking these cases as he did. It is important to remember that the mere appearance of impropriety is sufficient to warrant disqualification.

For all of these reasons, each Petitioner is entitled to the relief sought – disqualification of Judge Adams and reassignment to another judge.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to State Attorney, Lee County, 2000 Main Street, 6th Floor, Fort Myers, Florida 33901 by email to ljustham@sao.cjis20.org; and Judge James Adams, 1700 Monroe Street, Fort Myers, Florida 33901 via hand-delivery, on this 26th day of June, 2017.

Respectfully submitted,

/s/Louis Arslanian

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